

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION

**COPY**

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In re:  
JUMBO MINING  
COMPANY,  
a Texas Corporation,  
Debtor

Case No. 97-14326FM

Chapter 7

**WESTERN STATES MINERALS CORPORATION'S OBJECTION TO THE FIRST  
STIPULATION AND MOTION BY THE TRUSTEE FOR AN ORDER PERTAINING TO  
THE DRUM MINE IN UTAH (WITH A PROOF OF CLAIM) AND REQUEST FOR A  
HEARING**

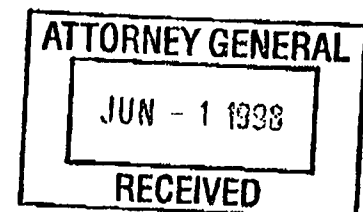
COMES NOW Western States Minerals Corporation ("Western"), by and through its undersigned counsel, and files this Objection to the Trustee and the State of Utah, Department of Natural Resources' First Stipulation and Motion for an Order Pertaining to the Drum Mine in Utah (With Proof of Claim) (the "Motion") and respectfully Requests a Hearing to be held on the relief requested in the Motion. Western would show this Honorable Court as follows:

**I. BACKGROUND**

1. Western States Minerals Corporation is a creditor of Jumbo Mining Company ("Debtor").
2. On or about April 21, 1998, the Trustee and the State of Utah, Department of Natural Resources, both the Division and Board of Oil, Gas and Mining filed a First Stipulation (the "Stipulation"). This Objection is filed in a timely manner, thus preserving Western's right to a hearing on the relief requested in the Motion and Stipulation.
3. Western hereby asserts the following objections:

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## II. SPECIFIC OBJECTIONS

4. Western objects to the Motion on the grounds that not all interested parties were included in the Stipulation. The Department of the Interior through the Bureau of Land Management ("BLM") filed a duplicate claim against the Debtor's estate for the same amount on the same reclamation issue as the State of Utah's Division of Oil, Gas and Mining ("DOGM") and the Board of Oil, Gas and Mining (the "Board"). BLM should have been included as a party to the Stipulation, but they were not and, therefore, the Stipulation and Motion should be denied.
5. Western objects to the Trustee's agreement to lift the automatic stay provisions in ¶ 30 of the Motion. Under 11 U.S.C. § 362(a), all attempts to collect outstanding debts are automatically stayed. Section 362(b) provides exceptions to the automatic stay, including a provision under § 362 (b)(4) which states that the filing of a bankruptcy petition does not operate as a stay of a governmental unit's commencement or continuation of actions or proceedings to enforce that governmental unit's police or regulatory powers. 11 U.S.C. § 362(b)(4). Importantly, to qualify for this exception, the governmental unit's purpose for pursuing the action or proceeding must be for the conservation of the public's health, safety, or welfare. Pursuing pecuniary interests is insufficient to qualify for the exception. See In re Neiberger, 112 B.R. 714, 715 (Bankr. E.D. Pa. 1990), vacated on other grounds, 120 B.R. 21 (E.D. Pa. 1990), aff'd, 934 F.2d 1300 (3d Cir. 1991). In addition, only administrative proceedings to determine liability are excepted from the automatic stay, not proceedings to collect or enforce a judgment. See In re Murray, 128 B.R. 517, 519-20 (Bankr. N.D. Tex. 1991).

is too costly to pursue now, in light of his other obligations, and may choose not to pursue the appeal immediately. If the DOGM findings are deemed final and non-appealable, then, should the Trustee determine that appeal is warranted, the Trustee would be forced to seek appeal in the federal courts. Taking such action could potentially be more expensive and could delay the bankruptcy proceedings further. Therefore, the Trustee should be prohibited from stipulating that he will waive the right to appeal the DOGM findings to the Board upon withdrawal of the pre-petition appeal.

9. Western objects to the default provisions in ¶ 31 of the Motion. The Trustee's most important obligation under a Chapter 7 proceeding is to act as the legal representative of the Debtor's Estate, and the locus of that obligation is the Bankruptcy Court. The Trustee should not be forced to demote the forum of the Bankruptcy Court in Texas in favor of administrative proceedings in Utah. The Trustee would be exposed to great expense and inconvenience to litigate in Utah. In addition, the Trustee waives any right to appeal a default judgment in this provision. This waiver could have grave consequences for all parties should the Trustee not appear and defend the pre-petition appeal on the merits simply because the Trustee chose to attend to the business of the bankruptcy proceeding. The risk of a default judgment and the consequences of such a judgment are too great to allow the Trustee to stipulate this provision.
10. Furthermore, ¶ 31 states that the Debtor must "appear and defend on the merits at the Board Hearing" in order to avoid a default judgment. The Debtor does not legally represent the Estate in a Chapter 7 proceeding. Only the Trustee is entitled to represent the Estate in any

matter pertaining to the Estate. Allowing the Board to enter a default judgment because the Debtor did not appear is contrary to the Bankruptcy Code and Rules.

11. Western objects to the Stipulation that the Trustee and the Debtor will regard as valid for purposes of liquidating the Debtor's estate in the amount determined by any final order of the Board and that no parties in interest to the bankruptcy proceeding can challenge the amount so determined. This provision may prolong the administration of the bankruptcy estate. As long as the Board has not issued a final decision, the bankruptcy proceeding will be delayed until such an order is issued because the creditor has not yet assigned a final value to its claim. Should the Board issue a non-final order, the Trustee's permissible actions are unclear. Moreover, even if the Board issues a final order, the Trustee may appeal the Board's decision in federal court (not in the bankruptcy proceeding). Paragraph 32 of the Motion does not expressly recognize the Trustee's right to obtain an estimation of the claim under 11 U.S.C. § 502(c). Until the Trustee exhausted all appeals, the Bankruptcy proceeding could be indefinitely delayed. The Trustee's stipulation to accept a final order of the Board must be denied.
12. Western objects to any stipulation that the Trustee will accept DOGM's contention in ¶ 33(B) that DOGM has a priority unsecured claim.
13. Western objects to the stipulation in ¶ 33(C) that the final decision of the Board will "be deemed an allowed and timely amendment" to the Proof of Claim against the Debtor's estate. The effect of a non-final decision by the Board or a final decision by another governmental unit (e.g., federal court) on the amendment of the Proof of Claim is unclear from the express language of the provision.

WHEREFORE, Western requests that the Court deny the Motion, schedule a Hearing on the Motion and for such other and further relief as the Court deems just.

Respectfully submitted,

BREGA & WINTERS, P.C.

By:  For

Glenn W. Merrick, Texas Bar No. 13957980

Suite 2222

1700 Lincoln Street

Denver, Colorado 80203

Telephone: (303)866-9400

ATTORNEY FOR WESTERN STATES MINERAL  
CORPORATION

**CERTIFICATE OF SERVICE**

The undersigned certifies that on the 29th day of May 1998, the foregoing **WESTERN STATES MINERALS CORPORATION'S OBJECTIONS TO THE FIRST STIPULATION AND MOTION BY THE TRUSTEE FOR AN ORDER PERTAINING TO THE DRUM MINE IN UTAH (WITH A PROOF OF CLAIM) AND REQUEST FOR A HEARING** was served upon the parties listed below by mailing true and genuine copies thereof, first class mail, postage prepaid, addressed to their counsel of record as follows:

Patrick J. O'Hara, Esq.  
Daniel G. Moquin, Esq.  
Utah Attorney General's Office  
160 East 300 South, 5th Floor  
P.O. Box 140857  
Salt Lake City, Utah 84114-0857

John W. Alvis, Esq.  
Alvis, Carssow & Ingalls  
5766 Balcones Drive, Suite 201  
Austin, Texas 78731

C. Daniel Roberts, Esq.  
C. Daniel Roberts & Associates, P.C.  
415 Westlake Place  
1515 Capital of Texas Highway South  
Austin, Texas 78746

James V. Hoeffner, Esq.  
515 Congress Avenue  
Suite 2600  
Austin, Texas 78701-4042

